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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,806	09/17/2008	Patrick Blin	D-17065	4887

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MEADWESTVACO CORPORATION  
ATTN: IP LEGAL DEPARTMENT  
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RALEIGH, NC 27606

EXAMINER
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DESAI, KAUSHIKKUMAR A

ART UNIT	PAPER NUMBER
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3728

NOTIFICATION DATE	DELIVERY MODE
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07/22/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,806	<b>Applicant(s)</b> BLIN, PATRICK	
	<b>Examiner</b> KAUSHIKKUMAR DESAI	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/26/2007</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p) (5) because they include the following reference character(s) mentioned in the description but not identified: In claims 16-18 and 27 “initiating means for initiating tearing of said panel”. Corrected drawing sheets in compliance with 37 CFR 1.121(d) and amendment to the specification to add the reference character(s) identification in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. Claim 22 recite “retaining means for preventing the top closure panel from being completely released from said open top container, wherein said retaining means is so arranged as to engage complementary retaining means provided by said open-topped container”. Applicant is relating the top closure panel to an unclaimed open-topped container. Therefore, the claim is indefinite because examiner cannot determine how to arrange the retaining means since applicant don't have a positively claimed complementary retaining means on a container. some of these features are indeterminate from the container per se, which further renders the claimed structure indefinite.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 15, 23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6168012 to Galbierz.

As to claims 15 and 25, Galbierz discloses a blank for top closure panel (505, fig 13) for closing a top of an open-topped container, said panel comprising at least one aperture (517) for receiving a portion of an article held within said container. Intended use recitation “for closing a top of an open-topped container” and “for receiving a portion of an

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article held within said container”, has not been given any patentable weight because, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). A tear feature (column 12, lines 43-65, fig 13) for enlarging the size of said at least one aperture (517), said tear feature comprising at least one discrete group of slits (516a-c), said slits of said at least one discrete group radiating from said at least one aperture, each of said slits of said at least one discrete group extending generally perpendicularly to a notional radial line of said at least one aperture, said slits in said at least one discrete group being arranged such that removal of an article through said aperture causes a tear to propagate to break portions of said top closure panel between radially successive slits of said at least one discrete group, said tear propagating divergently with respect to said notional radial line thereby causing the size of said at least one aperture to be progressively increased.

As to claim 23, Galbierz discloses slits of said at least one discrete group are of substantially equal length (fig 13).

**6.** Claims 15-18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5706936 to Bernstein.

As to claims 15 and 25, Bernstein discloses a blank (10, fig 2) for top closure panel for closing a top of an open-topped container, said panel comprising at least one aperture (26) for receiving a portion of an article held within said container. Intended use recitation

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“for closing a top of an open-topped container” and “for receiving a portion of an article held within said container”, has not been given any patentable weight because, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). A tear feature (column 2, lines 23-41, fig 2) for enlarging the size of said at least one aperture, said tear feature comprising at least one discrete group of slits (44, 46 and 48), said slits of said at least one discrete group radiating from said at least one aperture, each of said slits of said at least one discrete group extending generally perpendicularly to a notional radial line of said at least one aperture, said slits in said at least one discrete group being arranged such that removal of an article through said aperture causes a tear to propagate to break portions of said top closure panel between radially successive slits of said at least one discrete group, said tear propagating divergently with respect to said notional radial line thereby causing the size of said at least one aperture to be progressively increased.

As to claims 16 and 27, Bernstein discloses at least one aperture (26) comprises initiating means (28, fig 2) for initiating tearing of said panel, said initiating means being disposed between said at least one aperture and said at least one discrete group of slits. With regards to the “means for initiating tearing of said panel”, this limitation meets the three-prong test per MPEP 2181 and thereby invokes 35 USC 112 6<sup>th</sup> paragraph. In the instant specification, the “said means for initiating tearing of said panel” is shown in Fig. 3, Bernstein disclose an initiating means for initiating tearing of panel (28. Radial cuts (28) in Bernstein are considered to be an equivalent to applicant’s means for initiating

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tearing because it performs the same function in substantially the same way and produces substantially the same result as the corresponding element in applicant's specification. See MPEP 2183.

As to claim 17, Bernstein discloses initiating means (28, fig 2) comprises a cut line disposed in registry with a notional radial line of said at least one aperture.

As to claim 18, Bernstein discloses initiating means comprises a cut line extending radially from said at least one aperture generally toward a slit of said at least one discrete group closest to said at least one aperture.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16-21, 24 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6168012 to Galbierz.

As to claims 16 and 27, Galbierz discloses at least one aperture (517, fig 13) and discloses the initiating slit (39, fig 1). It would be obvious to provide slit (39) to aperture (517) for easy and controlled tearing of the panel, said initiating means being disposed between said at least one aperture and said at least one discrete group of slits. With regards to the "means for initiating tearing of said panel", this limitation meets the three-

prong test per MPEP 2181 and thereby invokes 35 USC 112 6<sup>th</sup> paragraph. In the instant specification, the “said means for initiating tearing of said panel” is shown in Fig. 3, Galbierz disclose an initiating means for initiating tearing of panel. Slit (39) in Galbierz are considered to be an equivalent to applicant’s means for initiating tearing because it performs the same function in substantially the same way and produces substantially the same result as the corresponding element in applicant’s specification. See MPEP 2183.

As to claim 17, modified Galbierz discloses initiating means (39, fig 2) comprises a cut line disposed in registry with a notional radial line of said at least one aperture.

As to claim 18, modified Galbierz discloses initiating means comprises a cut line extending radially from said at least one aperture generally toward a slit of said at least one discrete group closest to said at least one aperture.

As to claims 19 and 26, Galbierz discloses at least one discrete group of slits includes at least two slits, except one of said at least two slits furthest from said at least one aperture is longer than another one of said at least two slits closest to said at least one aperture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least two slits furthest from said at least one aperture longer than another one of said at least two slits closest to said at least one aperture, since it has been held that such a particular parameter would involve a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Please note that in the instant application, applicant has not disclosed any criticality for the claimed limitations. MPEP 2144.05 (II-B).



As to claim 20, Galbierz discloses the claimed invention with at least one discrete group of slits includes three slits concentrically arranged with respect to said at least one aperture except, at least one discrete group of slits includes five slits concentrically arranged with respect to said at least one aperture such that one of said five slits closest to said at least one aperture is disposed in overlapping relation with at least two of said five slits further spaced from said aperture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one discrete group of slits includes five slits concentrically arranged with respect to said at least one aperture such that one of said five slits closest to said at least one aperture is disposed in overlapping relation with at least two of said five slits further spaced from said aperture, since it has been held that mere duplication of the essential working parts and rearranging parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and *In re Japikse*, 86 USPQ 70. Please note that in the instant application, applicant has not disclosed any criticality for the claimed limitations. MPEP 2144.04 (VI-B and C).

As to claim 21, Galbierz discloses the claimed invention except wherein a termination of one slit of said at least one discrete group is spaced between 1 mm and 5 mm from a termination of an adjacent slit of said at least one discrete group. since it has been held that such a particular parameter would involve a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Please note that in the instant

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application, applicant has not disclosed any criticality for the claimed limitations. MPEP 2144.05 (II-B).

As to claim 24, Galbierz discloses the claimed invention except each of slits of said at least one discrete group furthest from said at least one aperture are longer than a slit closest to said at least one aperture. since it has been held that such a particular parameter would involve a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Please note that in the instant application, applicant has not disclosed any criticality for the claimed limitations. MPEP 2144.05 (II-B).

9. Claims 15 and 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2752559 to Dixneuf, in view of Galbierz.

As to claims 15 and 25, Dixneuf discloses a blank (28, fig 6) for top closure panel for closing a top of an open-topped container, said panel comprising at least one aperture (29) for receiving a portion of an article held within said container. Dixneuf lacks a tear feature for enlarging the size of said at least one aperture. Galbierz teaches about a tear feature (column 12, lines 43-65, fig 13) for enlarging the size of said at least one aperture (517), said tear feature comprising at least one discrete group of slits (516a-c), said slits of said at least one discrete group radiating from said at least one aperture, each of said slits of said at least one discrete group extending generally perpendicularly to a notional radial line of said at least one aperture, said slits in said at least one discrete group being arranged such that removal of an article through said aperture causes a tear to propagate

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to break portions of said top closure panel between radially successive slits of said at least one discrete group, said tear propagating divergently with respect to said notional radial line thereby causing the size of said at least one aperture to be progressively increased. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Galbierz tear feature to Dixneuf top closure panel as claimed; such a modification would predictably provide easier and controlled tearing of panel. "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396.

As to claim 22, Dixneuf modified in view of Galbierz discloses retaining means (legs, 31, fig 6) for preventing the top closure panel from being completely released from said open top container, wherein said retaining means is so arranged as to engage complementary retaining means provided by said open-topped container. With regards to the "retaining means for preventing the top closure panel from being completely released from said open top container", this limitation meets the three-prong test per MPEP 2181 and thereby invokes 35 USC 112 6<sup>th</sup> paragraph. In the instant specification, the "retaining means for preventing the top closure panel from being completely released from said open top container" is shown in Fig. 3, Dixneuf disclose a retaining means for preventing the top closure panel from being completely released from said open top container. Tabs (legs, 31, fig 6) in Dixneuf are considered to be an equivalent to applicant's retaining means for preventing the top closure panel from being completely released from said open top container because it performs the same function in substantially the same way

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and produces substantially the same result as the corresponding element in applicant's specification. See MPEP 2183.

### ***Conclusion***

**10. Prior Art not relied upon:** Please refer to the references listed in attached PTO-892, which, are not relied upon for claim rejection since these references are relevant to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR DESAI whose telephone number is (571)270-7290. The examiner can normally be reached on Monday- Friday 7:00 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KAUSHIKKUMAR DESAI/  
Examiner, Art Unit 3728  
Wednesday, July 15, 2009

/Stephen Garbe/  
Primary Examiner, Art Unit 3728